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May 28, 1992

Dear

Re: Tenancy in Common and Partnership Changes  
in Ownership Under Proposition 13

This is in response to your letter dated April 5, 1992. You say seven brothers and sisters own farm acreage, each holding an equal undivided interest in the property. You say they share all net income equally. And in response to my phone call, you tell us that title is held as tenancy in common.

You first ask whether a change in ownership reassessment will be triggered if one of the seven owners dies and leaves his/her one-seventh interest to his/her children.

"The general rule is that the creation, transfer, or termination of a tenancy in common interest is a change in ownership of such interest, but only the portion of the property represented by the interest changing ownership is reappraised." (Ehrman and Flavin, Taxing Calif. Prop. (3rd E.D.) section 2:13, citing Revenue and Taxation Code section 61(e); 18 California Code of Regulations section 462(b)(1)). One exception to the general rule is that "there is the parent/child exclusion, permitting transfers of a principal residence and up to \$1 million of other real property between parents and children free of assessment, which includes tenancy in common interests." (Ehrman and Flavin, supra, section 2:13; Revenue and Taxation Code section 63.1.) The property transferred does not appear to be a residence, so if the "other" interest transferred to the children does not exceed the \$1 million limitation then the transfer here to the children would not trigger a change in ownership reassessment if a timely claim for exclusion is filed pursuant to Revenue and Taxation Code section 63.1.

We believe the so-called "5 and 10" exception does not apply to avoid a change in ownership reassessment under these

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circumstances. That exception only applies when the property transferred consists of a cumulative value of less than 5% of the total value of the property and does not exceed a value of \$10,000. (Ehrman and Flavin, supra § 2:13, citing Revenue and Taxation Code section 65.1) The property transferred here was a one-seventh interest (approximately 14%) which exceeds the 5% limit.

You next ask, if an additional owner dies and leaves his/her one-seventh interest to another of the surviving brothers or sisters, would this trigger a change in ownership reassessment?

The change in ownership rule for ownership in tenancies in common is subject to four principal exceptions. They are the inter-spousal exclusion, the "no change in proportional interest" exception, the "5 and 10" exception, and the parent/child exclusion. None of these exceptions would apply to a transfer of a tenancy in common interest under these circumstances. Therefore, if a second owner dies and leaves his/her one-seventh interest to another of the surviving tenants in common. Such conveyance would trigger a one-seventh change in ownership reassessment of the property.

You next ask, if still another owner dies and leaves his/her one-seventh interest to his/her nephews, would this trigger a change in ownership reassessment? As discussed immediately above, there is no provision to exclude a one-seventh change in ownership reassessment of the property under these circumstances.

You next change the scenario and ask what results would follow if all seven brothers and sisters were to set up a general partnership to hold title, each as an equal general partner. Thus, we assume equal capital and profit accounts. The partnership would terminate only at the death of all seven partners or upon unanimous consent of all surviving partners.

As said above, one of the exceptions to the general change in ownership rule of tenancies in common ownership is the so-called "no change in proportional interest" exception. Revenue and Taxation Code section 62 provides, in part:

"Change in ownership shall not include:

\* \* \*

"(a)(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a co-tenancy to a partnership,

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...., which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. ...."

18 California Code of Regulations section 462(b)(2)(A), similarly provides that a transfer of a tenancy in common interest is excluded from change in ownership where the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners. Such a transfer may be a transfer from co-tenancy to a legal entity such as a partnership. The transferees shall be considered to be the "original co-owners" of the property for purposes of determining whether a change in ownership has occurred upon the subsequent transfer of any ownership interest in the legal entity.

Since the seven brothers and sisters would transfer their tenancy in common interests equally to a partnership entity without a change in the proportional interests, then a change in ownership reassessment would not occur.

You next ask, if one of the seven brothers or sisters dies and the partnership continues with decedent's income going to his/her children, would this trigger a change in ownership reassessment?

Revenue and Taxation Code section 64(a) provides that generally the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interests, shall not be deemed to constitute a transfer of real property by the legal entity. However, Revenue and Taxation Code section 64(d) provides that whenever shares or other ownership interests representing cumulatively more than 50% of the total interests in the entity are transferred by any of the original co-owners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of section 62 shall be reappraised. The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50% of the interests in the entity. Thus, the transfer of a one-seventh interest in the partnership falls short of a total 50% interest in the partnership and does not trigger a change in ownership

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reassessment where, as here, the partnership continues in existence after the transfer.

You next ask, if still another partner dies and the partnership continues with his/her one-seventh interest conveyed to the surviving five partners, equally, would this trigger a change in ownership reassessment.

At this point, a total of two-sevenths of the partnership would have been conveyed by the original owners. Two-sevenths interest in the partnership is approximately a 29% interest conveyed. Since such interest falls short of the 50% interest allowed without a change in ownership reassessment, then such a subsequent one-seventh interest conveyance would not trigger a change in ownership reassessment. After an equal distribution of this one-seventh partnership capital and profits, each of the five remaining partners would have his/her one-seventh interest plus one-fifth of the deceased partner's one-seventh interest, and no partner would have received more than 50% of the total interest in both partnership capital and profits.

You next ask, if a third partner dies, and the partnership continues with his/her one-seventh interest conveyed to his/her nephews, would this trigger a change in ownership reassessment?

Again, no. At this point, a total of three-sevenths of the partnership would have been conveyed by the original owners. Three-sevenths interest in the partnership is approximately a 43% interest conveyed. Since such interest falls short of the 50% interest allowed without a change in ownership reassessment, neither would this one-seventh interest conveyance trigger a change in ownership reassessment.

You next ask, if a fourth partner dies, and the partnership continues with his/her interest going to his/her children, would this trigger a change in ownership reassessment?

The transfer by the fourth partner would trigger a change in ownership reassessment of the entire property because such transfer would cumulatively amount to approximately a 57% interest conveyed. (See 18 Calif. Code of Regulations Section 462(j)(4)(B)). Even though the transfer were to go to the partner's children, a change in ownership reassessment would not be avoided by the parent/child exclusion. The parent/child exclusion does not apply to interests in a legal entity such as a partnership. (See Revenue and Taxation Code section 63.1(c)(6).)

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You next revise the scenario, as an alternate course for the partnership, such that after the third partner dies, the partnership is dissolved, leaving the heirs of three deceased partners each holding one-seventh partnership interests and the four surviving original partners each holding one-seventh partnership interests. You ask whether the interests held by the four original partners would be reassessed when the partnership is dissolved and ownership of the property reverts to the seven owners as tenants in common.

Revenue and Taxation Code section 64(d) provides:

"If property is transferred on or after March, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original co-owners." Whenever shares or other ownership interests representing cumulatively more than 50% of the total interests in the entity are transferred by any of the original owners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of section 62 shall be reappraised."

Presumably, this last question is designed to explore the question of whether the transaction you describe would constitute a transfer by the remaining four original co-owners of their partnership interests, for purposes of the 50 percent test set forth in section 64(d). In effect, the question is whether a 64(d) transfer of a partnership interest extends to the dissolution of a partnership. It might be argued, depending upon the facts of the transaction, that upon dissolution each partner exchanged his or her partnership interest for a pro-rata tenancy-in-common interest in the real property. In that case, it could be concluded that the 50% test of section 64(d) was satisfied and that the real property was subject to a change in ownership. That conclusion would raise the further question of whether the change in ownership would be subject to exclusion under subdivision (a)(2) of section 62, as a transfer which results solely in a change in the method of holding title in which proportional ownership interests remain unchanged.

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So far as we have been able to determine, this office has not yet addressed these questions and we respectfully decline to do so at this time. There are obvious differences in the change in ownership rules applicable to co-tenancy and the rules applicable to legal entities. Section 64(d) reflects the Legislature's recognition of the fact that these differences create the opportunity for manipulation of the rules in a manner not intended under general change in ownership principles. The application of section 64(d) in these situations is extremely sensitive therefore and prudence dictates that we await an actual transaction in which all of the facts are fully developed before we attempt to determine the legislative intent of that provision.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. Thus, you may wish to consult further with your local County Assessor's Office in this regard.

Our intention is to provide courteous and helpful responses to inquiries such as yours. Suggestions that help us accomplish this goal are appreciated.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard H. Ochsner", is written over a horizontal line.

Richard H. Ochsner  
Assistant Chief Counsel

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cc: